IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Bail Appl..No. 7539 of 2007()

CRMP.1404/2007 of DISTRICT COURT, KALPETTA
CRIME NO.267/07 OF PULPALLY POLICE STATION

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: PETITIONER/ACCUSED

SHIJU.P.T., S/O.THORITHANANDAN,
AGED 30, PUTHENVEETTIL HOUSE, PULPALLY,
SULTHAN BATHERY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: COMPLAINANT/STATE

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1. SUB INSPECTOR OF POLICE, PULPALLY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7539 of 2007

Dated this the 11th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations for offences punishable inter alia under SectionS 408 and 452 I.P.C. His application for anticipatory bail was dismissed by the learned Sessions Judge. The petitioner apprehends imminent arrest.

2. The crux of the allegations against the petitioner is that on account of prior animosity, he trespassed into the shop room of the defacto complainant after making sufficient preparations and allegedly attempted to commit the offence punishable under Section 308 I.P.C by using swords, sticks etc. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is innocent. He prays that direction under Section 438 Cr.P.C may be issued in favour of the petitioner. The primary contention on which the claim for anticipatory bail is founded is that the matter has been settled between the parties. The learned Public Prosecutor submits that to the best of information of the Investigating Officer, no such settlement has been reached.

4. Having considered all the relevant inputs, I find absolutely no circumstances which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously. Of course the petitioner along with the defacto complainant can appear before the learned Magistrate or the Investigating Officer in his attempt to satisfy the court/investigating officer that the matter has been settled.

(R.BASANT, JUDGE)

rtr/-